

4-9-2008

State v. Korn Clerk's Record v. 1 Dckt. 34965

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COPY

IN THE
SUPREME COURT
 OF THE
STATE OF IDAHO

STATE OF IDAHO,

Plaintiff, Respondent and

VS.

JEROME L. KORN

Defendant, Appellant and

Appealed from the District Court of the Third
 Judicial District for the State of Idaho, in and

for Payette County

Hon. Rehae J. Hoff District Judge

John Bujak

Attorney for Defendant/Appellant

Attorney for Appellant

Lawrence Wasden

Attorney General for the State of Idaho

Attorney for Respondent

Filed this

day of

, 20

APR - 9 2008

Clerk

By

Supreme Court Court of Appeals

Deputy

Entered on ATS by:

341965

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE

STATE OF IDAHO,
Plaintiff/Respondent,

Vs.

CASE NUMBER: CR-2006-0001271

SUPREME COURT #34965

JEROME L. KORN,
Defendant/Appellant.

CLERK' S RECORD ON APPEAL

Appeal from the District Court of the Third Judicial
District of the State of Idaho, in and for the
County of Payette.

The Honorable
Renae J. Hoff
District Judge

JOHN BUJAK
Attorney for Defendant/
Appellant
826 Third Street South
Nampa, Idaho 83651
Attorney for:
Appellant/Defendant

LAWRENCE WASDEN
Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010
Attorney for:
Respondent/Plaintiff

T A B L E O F C O N T E N T S

Payette County Case Number: CR-2006-0001271

Idaho Supreme Court Number: 34965

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State of Idaho vs. Jerome L Korn

Date	Code	User		Judge
4/19/2006	NCRM	CUTLER	New Case Filed - Misdemeanor	William B Dillon III
	PROS	CUTLER	Prosecutor assigned Brian D Lee	William B Dillon III
	HRSC	CUTLER	Hearing Scheduled (Arraignment 05/01/2006 09:30 AM)	William B Dillon III
	CRIM	ANDERSON	Criminal Complaint	William B Dillon III
5/1/2006	HRVC	CUTLER	Hearing result for Arraignment held on 05/01/2006 09:30 AM: Hearing Vacated	William B Dillon III
	NOAP	CUTLER	Notice Of Appearance	William B Dillon III
	DISC	CUTLER	Request For Discovery	William B Dillon III
	HRSC	EDWARDS	Hearing Scheduled (Pretrial Conference 05/19/2006 09:30 AM)	William B Dillon III
	HRSC	EDWARDS	Hearing Scheduled (Jury Trial 07/06/2006 09:00 AM)	William B Dillon III
		EDWARDS	Notice Of Hearing	William B Dillon III
5/9/2006	NOCO	CUTLER	Notice Of Compliance	William B Dillon III
5/19/2006	PTRL	DAVILA	Hearing result for Pretrial Conference held on 05/19/2006 09:30 AM: Pre-trial Conference	William B Dillon III
	HRSC	DAVILA	Hearing Scheduled (Motion to Dismiss 06/19/2006 09:00 AM)	William B Dillon III
		DAVILA	Notice Of Hearing	William B Dillon III
	MOTN	ANDERSON	Motion to Dismiss	William B Dillon III
6/12/2006	MISC	CUTLER	MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS	William B Dillon III
	MOTN	CUTLER	MOTION TO DISMISS	William B Dillon III
6/15/2006	STIP	EDWARDS	Stipulation to continue	William B Dillon III
	ORDR	EDWARDS	Order to continue	William B Dillon III
6/16/2006	HRVC	EDWARDS	Hearing result for Jury Trial held on 07/06/2006 09:00 AM: Hearing Vacated	William B Dillon III
	HRVC	EDWARDS	Hearing result for Motion to Dismiss held on 06/19/2006 09:00 AM: Hearing Vacated	William B Dillon III
	HRSC	EDWARDS	Hearing Scheduled (Hearing Scheduled 08/04/2006 11:00 AM) suppression hearing	William B Dillon III
	HRSC	EDWARDS	Hearing Scheduled (Jury Trial 08/24/2006 09:00 AM)	William B Dillon III
7/25/2006	SUBR	DAVILA	Subpoena Returned DEBRA DAWSON	William B Dillon III
8/4/2006	HRHD	CUTLER	Hearing result for Hearing Scheduled held on 08/04/2006 11:00 AM: Hearing Held suppression hearing	William B Dillon III
	ORDR	DAVILA	Order denying motion to dismiss	William B Dillon III
	CMIN	ANDERSON	Court Minutes	William B Dillon III
8/17/2006	SUBR	EDWARDS	Subpoena Returned - Jones/Costner/	William B Dillon III
8/18/2006	SUBR	DAVILA	Subpoena Returned LEROY CORDES	William B Dillon III

State of Idaho vs. Jerome L Korn

Date	Code	User	Judge
8/23/2006	SUBR	CUTLER	Subpoena Returned (SCHULLER) William B Dillon III
8/24/2006	SUBR	DAVILA	Subpoena Returned SEAN CARTER William B Dillon III
	JTST	CUTLER	Hearing result for Jury Trial held on 08/24/2006 William B Dillon III 09:00 AM: Jury Trial Started
	FOGT	CUTLER	Found Guilty After Trial William B Dillon III
	MISC	CUTLER	VERDICT William B Dillon III
	HRSC	CUTLER	Hearing Scheduled (Sentencing 09/08/2006 William B Dillon III 10:30 AM)
		CUTLER	Notice Of Hearing William B Dillon III
	CMIN	ANDERSON	Court Minutes William B Dillon III
9/8/2006	HRHD	CUTLER	Hearing result for Sentencing held on 09/08/2006 William B Dillon III 10:30 AM: Hearing Held
	PROB	CUTLER	Probation Ordered (CPCC-5-6-2 Exotic Animal William B Dillon III Violation-Prohibited Acts) Probation term: 24 months. (Unsupervised)
	SNIC	CUTLER	Sentenced To Incarceration (CPCC-5-6-2 Exotic William B Dillon III Animal Violation-Prohibited Acts) Confinement terms: Jail: 180 days. Suspended Jail: 150 days.
	SNPF	CUTLER	Sentenced To Pay Fine 225.00 charge: William B Dillon III CPCC-5-6-2 Exotic Animal Violation-Prohibited Acts
	HRSC	CUTLER	Hearing Scheduled (Review of Fines 12/22/2006 A Lynne Krogh 02:30 PM)
	PROB	CUTLER	Probation Ordered (I25-3905 Animals-Poss of William B Dillon III Deleterious Exotic Animals w/out Permit) Probation term: 24 months. (Unsupervised)
	STAT	CUTLER	STATUS CHANGED: closed pending clerk action William B Dillon III
	SNPF	CUTLER	Sentenced To Pay Fine 3000.00 charge: I25-3905 William B Dillon III Animals-Poss of Deleterious Exotic Animals w/out Permit
	MISC	ANDERSON	Judgment Charge 1 Prohibited Acts Exotic Animal William B Dillon III Violation
	MISC	ANDERSON	Judgment Charge 2 Possess Deleterious Exotic William B Dillon III Animals without Permit
9/22/2006	MOTN	EDWARDS	Motion for new trial William B Dillon III
10/20/2006	NOTC	EDWARDS	Notice of appeal William B Dillon III
	APDC	ANDERSON	Appeal Filed In District Court William B Dillon III
10/27/2006	CHJG	ANDERSON	Change Assigned Judge Renae J Hoff
	ORDR	ANDERSON	Order of Assignment Renae J Hoff
11/16/2006	ORDR	ANDERSON	Order for Preparation of Transcript and Appellate Renae J Hoff Scheduling
11/17/2006	MISC	ANDERSON	Estimated Cost of Preliminary Transcript Renae J Hoff cc:Bujak, Tami Weber

State of Idaho vs. Jerome L Korn

Date	Code	User		Judge
12/1/2006	MOTN	ANDERSON	Motion To Admit Defendant to Bail Pending Appeal	William B Dillon III
12/4/2006	ORDR	ANDERSON	Order Admitting the Defendant to Bail On Appeal	William B Dillon III
12/6/2006	BNDC	ANDERSON	Bond Posted - Cash (Receipt 9565 Dated 12/6/2006 for 409.50) Bond for Transcript	Renae J Hoff
	BNDC	ANDERSON	Bond Posted - Cash (Receipt 9566 Dated 12/6/2006 for 1500.00) Appellate Bond Posted	Renae J Hoff
	MOTN	ANDERSON	Motion to stay Execution of Judgment	Renae J Hoff
12/7/2006	ORDR	ANDERSON	Order staying Execution of Judgment pending appeal. cc:PA, DA,PCSO	William B Dillon III
	STAY	ANDERSON	Sentencing Stayed	William B Dillon III
	HRVC	ANDERSON	Hearing result for Review of Fines held on 12/22/2006 02:30 PM: Hearing Vacated JUDGMENT STAYED	A Lynne Krogh
3/1/2007	MISC	ANDERSON	Amended Estimate for Transcript cc:Bujak,Tami Weber	Renae J Hoff
3/8/2007	NOTC	ANDERSON	Notice of Transcript Lodged cc:Lee	Renae J Hoff
	MISC	ANDERSON	LODGED Appeal Transcripts cc:Lee, hold Bujak's pending balance	Renae J Hoff
3/15/2007	BNDC	ANDERSON	Bond Posted - Cash (Receipt 2328 Dated 3/15/2007 for 409.50)	Renae J Hoff
	NOTC	ANDERSON	Amended Notice of Transcript Lodged RE:Certificate of Service cc:Bujak with transcripts	Renae J Hoff
3/16/2007	BNDV	ANDERSON	Bond Converted (Transaction number 210 dated 3/16/2007 amount 409.50) for Appeal Transcript	Renae J Hoff
	BNDV	ANDERSON	Bond Converted (Transaction number 211 dated 3/16/2007 amount 409.50) for Appeal Transcript	Renae J Hoff
6/15/2007	LODG	ANDERSON	Lodged-Appellant Brief	Renae J Hoff
7/11/2007	LODG	CHYSELL	Lodged-Respondent's Brief	Renae J Hoff
12/12/2007	ORDR	ANDERSON	Appellate Decision c:PA,DA,Judge Dillon	Renae J Hoff
	ORDR	ANDERSON	Appellate Decision	Renae J Hoff
1/23/2008	APDC	ANDERSON	Appeal Filed In District Court	Renae J Hoff
	APSC	ANDERSON	Appealed To The Supreme Court	Renae J Hoff
	NOTC	ANDERSON	Notice of Appeal	Renae J Hoff
1/24/2008	MISC	ANDERSON	Estimated Cost of Clerk's Record c:Bujak	Renae J Hoff
	MISC	ANDERSON	Clerk's Certificate of Appeal c:ISC	Renae J Hoff
	STAT	ANDERSON	STATUS CHANGED: inactive	Renae J Hoff
1/31/2008	ORDR	ANDERSON	Order from ISC suspending appeal until further notice	Renae J Hoff
	BNDC	ANDERSON	Bond Posted - Cash (Receipt 918 Dated 1/31/2008 for 78.50) for estimated clerk's record	Renae J Hoff
2/12/2008	NTOA	ANDERSON	Amended Notice Of Appeal	Renae J Hoff
2/14/2008	MISC	ANDERSON	Amended Clerk's Certificate of Appeal	Renae J Hoff

BRIAN LEE

Payette County Prosecuting Attorney
1130 Third Avenue North
Room #105
Payette, ID 83661
(208) 642-6096
(208) 642-6099 (facsimile)

FILED
THIRD JUDICIAL DISTRICT COURT
PAYETTE COUNTY, IDAHO

APR 18 2006

BETTY J. DRESSEN, CLERK
BY _____ DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE

STATE OF IDAHO,	)	Case No.: CR-2006-1271
Plaintiff,)	
	)	COMPLAINT - CRIMINAL
v.)	
JEROME L. KORN,)	
Defendant.	)	ORIGINAL

STATE OF IDAHO)
: ss:
County of Payette)

Brian Lee Prosecuting Attorney, in and for the County of Payette, State of Idaho,
hereby informs the Court that the Defendant, **JEROME L. KORN**, is accused by this complaint
of the crimes of **COUNT I: POSSESSION OF WILD OR EXOTIC ANIMALS, A
VIOLATION OF PAYETTE COUNTY ORDINANCE 5-6-2 and COUNT II:
POSSESSION OF DELETERIOUS EXOTIC ANIMALS WITHOUT A POSSESSION
PERMIT, A VIOLATION OF IDAHO CODE 25-3905 AND IDAPA 02.04.27.111**, said
crimes being committed as follows:

COUNT I: That the Defendant, JEROME L. KORN individually and/or as
a representative of For the Birds, Inc., on or about the 9th day of March, 2006, in the

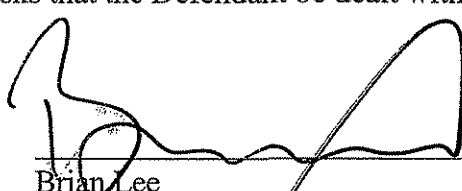
COMPLAINT - CRIMINAL 1

County of Payette, State of Idaho, did possess certain wild or exotic animals which are not native to the State of Idaho, to-wit: seven (7) tigers and one (1) giraffe.

COUNT II: That the Defendant, JEROME L. KORN individually and/or as a representative of For the Birds, Inc., on or about the 9th day of March, 2006, in the County of Payette, State of Idaho, was in violation of administration rules promulgated by the administrator of the Division of Animal Industries, to-wit: the possession of deleterious exotic animals without a possession permit from the Department of Agriculture as required by Administration Code 02.04.27.111.

All of which is contrary to the form of the statute and against the peace and dignity of the State of Idaho.

WHEREFORE, the Complainant asks that the Defendant be dealt with according to law.



Brian Lee
Prosecuting Attorney

SUBSCRIBED AND SWORN to before me this _____ day of _____.



Magistrate

FILED
THIRD JUDICIAL DISTRICT COURT
PAYETTE COUNTY, IDAHO

JUN 12 2006

BETTY J. DRESSEN, CLERK
BY: _____ DEPUTY

JOHN T. BUJAK
BUJAK LAW, P.L.L.C.
826 Third Street South
Nampa, ID 83651
Phone: (208) 468-9202
Fax: (208) 468-9203
Idaho State Bar No. 5544

Attorney for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF PAYETTE

STATE OF IDAHO,

Plaintiff,

vs.

JEROME L. KORN,

Defendant.

CASE NO. CR-2006-1271

MOTION TO DISMISS

COMES NOW, JEROME KORN, Defendant, by and through his attorney, JOHN T.

BUJAK, and hereby moves this honorable Court, pursuant to I.C.R. 48, for its order dismissing Count I of the Complaint in the above-captioned case on the basis that Payette County Ordinance 5-6-2 violates the contract clause of the U.S. and Idaho Constitutions as it is applied to the Defendant in this case.

This Motion is based upon the following:

1. The Memorandum of Law in Support of Motion to Dismiss filed

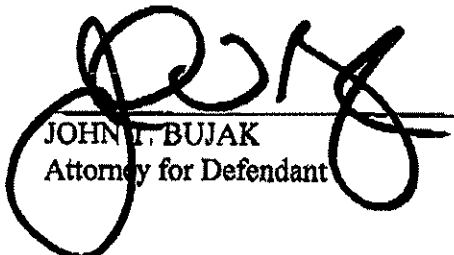
MOTION TO DISMISS

1

contemporaneously,

2. An opportunity to present additional evidence at the hearing on this Motion is respectfully requested.

DATED this 12 day of June, 2006.



JOHN T. BUJAK
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was delivered to the Plaintiff by faxing said copy to the Payette County Prosecutor's Office at 642-6099, on or about the 12 day of June, 2006.



JOHN T. BUJAK
Attorney for Defendant

JUN 15 2006

BRIAN LEE
Payette County Prosecuting Attorney
1130 Third Avenue North
Room #105
Payette, ID 83661
208-642-6096
Fax: 208-642-6099

BETTY J. DRESSEN, CLERK
BY [Signature] DEPUTY

ORIGINAL

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE

STATE OF IDAHO,	)	CASE NO.: CR 2006-1271
Plaintiff,)	
v.	)	ORDER TO CONTINUE
JEROME J. KORN,)	
Defendant.)	

ORDER

Based on the foregoing Stipulation and good cause appearing,

NOW THEREFORE, IT IS HEREBY ORDERED that the Suppression

Hearing scheduled for the 19th day of June, 2006, is continued to the 4th

day of Aug, 2006, at 11:00 A.m.

IT IS FURTHER ORDERED Jury Trial scheduled for the 6th day of July,

2006, is continued to the 24th day of Aug, 2006, at

9:00 A.m.

DATED this 15 day of June, 2006.

[Signature]
Magistrate

CLERK'S CERTIFICATE OF DELIVERY

I hereby certify that on 15 day of June, 2006, I caused a true and correct copy of the foregoing to be forwarded with all required charges prepaid, by the method (s) indicated below, to the person (s) listed below:

John Bujak
826 Third Street South
Nampa, ID 83651

Hand Delivery _____ U.S. Mail x Facsimile _____

Payette County Prosecuting Attorney
1130 Third Avenue North
Payette, ID 83661

Hand Delivery x U.S. Mail _____ Facsimile _____

BETTY J. DRESSEN
CLERK OF THE DISTRICT COURT

BY: AS
DEPUTY CLERK

THIRD JUDICIAL DISTRICT, STATE OF IDAHO
COUNTY OF PAYETTE
MOTION HEARING

FILED
THIRD JUDICIAL DISTRICT COURT
PAYETTE COUNTY, IDAHO

AUG 04 2006

BETTY J. DRESSEN, CLERK
BY _____ DEPUTY

STATE OF IDAHO,

Plaintiff,

-vs-

Jerome Korn

Defendant,

Case No. CR2006-1271

Date: 8/4/06

Judge: Dillon

Tape No. (174) 2890-623

Motion: TO Dismiss

(175) 00-573

APPEARANCES:

☒ Prosecutor
☒ Defendant
☐ Other

Kelso/lee

☒ Defendant's Attorney
☐ Interpreter Sworn

Bujak

☐ FAILURE TO APPEAR:

☐ Plaintiff failed to appear.
☐ Defendant failed to appear.
☐ Bench warrant issued.

☐ Bail on warrant \$ _____.

PRELIMINARY MOTIONS:

STATE'S WITNESSES SWORN: 1. _____ 2. _____

3. _____ 4. _____ 5. _____

DEFENDANTS WITNESSES SWORN: 1. Jerry L. Korn

2. _____ 3. _____ 4. _____ 5. _____

☒ The defendant was sworn and presented testimony on his/her behalf.
☒ Cross Examined ☐ Examined by the Court.

REBUTTAL WITNESSES:

☐ STATE'S 1. _____ 2. _____
☐ DEFENDANT'S 1. _____ 2. _____

☒ EXHIBITS: As set forth on attached list.

☐ CONTINUED TO _____ at _____ a.m./p.m. with Judge _____

OTHER: Slip to admit exhibits H6

Motion DENIED

Aug 22, 2006 @ 1pm
Status Conf.

Date: Aug 4, 2006

Deputy Clerk: _____

AUG 04 2006

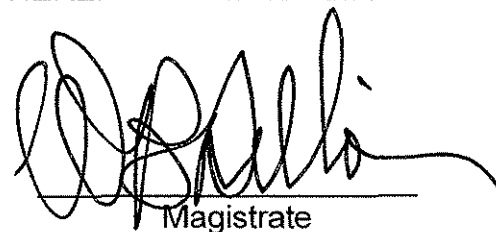
BETTY J. DRESSEN, CLERK
BY _____ DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE

STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-2006-1271
)	
-VS-	)	ORDER DENYING MOTION
	)	TO DISMISS
JEROME L. KORN,)	
)	
Defendant(s).)	

This matter came before the Court August 4, 2006, on Defendant's Motion to Dismiss. For the reasons stated on the record, IT IS HEREBY ORDERED that the Motion to Dismiss is DENIED.

Dated: August 4, 2006.


Magistrate

cc: Prosecuting Attorney

John T. Bujak
826 Third Street South
Nampa, ID 83651

AUG 24 2006

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE
Magistrate Division

BEETTY J. DRESSEN, CLERK
BY _____ DEPUTY

AUGUST 24, 2006

Present: HONORABLE WILLIAM B. DILLON

THE STATE OF IDAHO,)	
	)	Tape No. (191) (192)
Plaintiff,	)	(193) (194)
-vs-)	
	)	Case No. CR-2006-001271
JEROME J. KORN,)	
	)	COURT MINUTES
Defendant.)	

THIS BEING THE TIME HERETOFORE SET AT 9:00 A.M. for Jury Trial, Court convened at 9:05 A.M. Present in the Courtroom were: Brian Lee, Prosecuting Attorney; John Bujak, Attorney for the Defendant; and the Defendant, Jerome Korn.

The parties reviewed the jury instructions and specifically approved instruction number 2. They also discussed possible witnesses.

The jury panel entered the courtroom at 9:11 A.M., roll call was taken and preliminary instructions were given. The panel was sworn in by the clerk to answer true.

Mr. Lee and Mr. Bujak gave their opening statements to the jury panel.

Six jurors were called: Jurors number 218, Melissa J. Smith; number 207, Cheryl K. Jacques; number 228, Lonnie R. Hunt; number 241, Dean J. Coon; number 203, Christine A. Davison, and number 220, Kevin E. Coats. The jurors were questioned by the Court, Mr. Lee and Mr. Bujak. Juror number 218 was excused for cause. Juror number 209, Ruth L. Brown, was drawn and questioned by the parties. The jury panel was passed for cause.

The State exercised its first peremptory challenge. Juror number 233, Lisa M. Rhinehart, was called and questioned by Mr. Lee and Mr. Bujak. The juror was passed for cause. The Defendant exercised its first peremptory challenge. Juror number

250, Jared Stockett, was called, questioned and passed for cause. The State waived its second peremptory challenge. The Defendant exercised its second peremptory challenge. Juror number 242, Jennifer Galloway, was called questioned and passed for cause. The State waived its third peremptory challenge. The Defendant exercised its third peremptory challenge. Juror number 238, Trileanna Hieter, was called, questioned, and passes for cause. The State exercised its fourth peremptory challenge. Juror number 212, David W. Welch, was called, questioned and passed for cause. The Defendant waived it fourth peremptory challenge.

The jury panel of six sworn to hear the case consisted of: number 212, David W. Welch; number 207, Cheryl K. Jacques; number 233, Lisa M. Rhinehart; number 241, Dean J. Coon; number 203, Christine A. Davison; and number 220, Kevin E. Coats. The bailiff, Bill Harib, was given the oath by the clerk.

The Court recessed at 10:10 A.M. and reconvened at 10:22 A.M. The parties had no objections to the jury instructions provided by the Court. The parties stipulated to the admission of the State's exhibits 1, 2, 3, and 4.

The jury entered the courtroom at 10:26 A.M. The record reflects that they were all present and properly seated. The Court gave preliminary instructions to the jury.

Mr. Bujak motioned the Court to exclude all witnesses. Motion granted.

John Chatburn, Department of Agriculture, was duly sworn and examined by Mr. Lee. State's exhibit 1 was identified by the witness. The witness was cross-examined by Mr. Bujak. Defendant's Exhibit A was marked and identified by the witness. Mr. Bujak motioned the Court for admission. With no objection, Defendant's Exhibit A was admitted. Defendant's exhibit B was marked and identified by the witness. It was not offered for admission. The witness was questioned on redirect and excused.

Jolene Janicek, Department of Agriculture, was duly sworn and examined by Mr. Lee. The witness identified State's exhibit 3. The witness was cross-examined by Mr. Bujak and questioned on redirect by Mr. Lee and excused.

Corey Jones, Payette County Sheriff's Office, was duly sworn and examined by Mr. Lee. The witness was cross examined by Mr. Bujak and questioned by Mr. Lee on redirect. Witness excused.

Court recessed at 11:30 A.M. and reconvened at 11:43 A.M. The jury returned to the courtroom and the parties stipulated to the jury's return and proper seating.

Leroy Cordes was duly sworn and examined by Mr. Lee and cross examined by Mr. Bujak. The witness was released.

Keith Schueller was duly sworn and examined by Mr. Lee and cross examined by Mr. Bujak. Witness excused.

The Court recessed at 11:55 A.M. and reconvened at 12:01 P.M.

Mr. Lee motioned the Court for admission of State's exhibit 4. With no objection, State's exhibit 4 was admitted.

The jury returned to the courtroom at 12:03 P.M. and the Court noted for the record that they were present and properly seated.

Mr. Lee read excerpts of Mr. Korn's testimony from the Motion to Dismiss hearing. State rested.

The jury was excused from the courtroom while Mr. Bujak motioned the Court for dismissal. Motion denied.

Court reconvened at 12:06 P.M. The parties stipulated to the jury's return and seating in the courtroom.

Jerome Korn was duly sworn and examined by Mr. Bujak. Defendant's exhibit c was marked and identified by the witness. Mr. Bujak motioned the Court for admission. With no objection, Defendant's exhibit C was admitted.

Court recessed at 12:37 P.M. for the lunch break and reconvened at 2:10 P.M. The Court noted that the jury was present and appropriately seated. The defendant, Jerome Korn, returned to the witness stand and was cross examined by Mr. Lee. Mr. Bujak questioned the defendant on redirect examination. Defendant's exhibits D, E, and F were marked and identified by the witness. Mr. Bujak motioned the Court for admission of Defendant's exhibit D. With no objection, Defendant's exhibit D was admitted. Mr. Bujak motioned the Court for admission of Defendant's exhibit E and F. Mr. Lee objected to the admission. Objection sustained. Exhibits were not admitted. Witness excused. Defense rested.

Mr. Chatburn was recalled as a rebuttal witness and questioned by Mr. Lee. No cross-examination. Witness excused.

Court recessed at 2:54 P.M. and reconvened at 3:12 P.M. The parties had reviewed the jury instructions and Mr. Lee objected to instruction #13. The Court offered an alternative #13 which both parties agreed to. Mr. Lee objected to instruction #16.

Objection overruled. The Court also supplied the parties with a corrected verdict form.

The jury returned to the courtroom and the Court read the final instructions to the jury.

Mr. Lee again objected to instruction #16. The Court recessed and Mr. Lee and Mr. Bujak met in Chambers with the judge at 3:31 P.M. When court reconvened the Court overruled Mr. Lee's objection.

Mr. Lee gave his closing argument to the jury.

Mr. Bujak gave his closing argument to the jury.

Mr. Lee presented final arguments.

The Bailiff was given the oath for deliberation and the Court recessed at 3:56 P.M. for the jury to begin deliberation.

Court reconvened at 4:50 P.M. and the jury returned to the courtroom. The parties stipulated to their return and seating.

The verdict was read finding Mr. Jerome Korn guilty as charged on both counts. The jury was given final instructions, thanked for their service and released.

The Court ordered this case set for sentencing on September 8, 2006 at 10:30 A.M. Court recessed at 4:57 P.M.


DEPUTY CLERK

FILED
THIRD JUDICIAL DISTRICT COURT
PAYETTE COUNTY, IDAHO

AUG 24 2003

BETTY J. DRESSEN, CLERK
BY [Signature]

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE

THE STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-2006-1271
)	
-vs-)	
	)	VERDICT
JEROME L. KORN,)	
)	
Defendant.)	

We, the jury in the above entitled matter, find the defendant, JEROME L. KORN:

COUNT I

X Guilty of the offense of Possession of Wild or Exotic Animals;

OR _____ Not guilty.

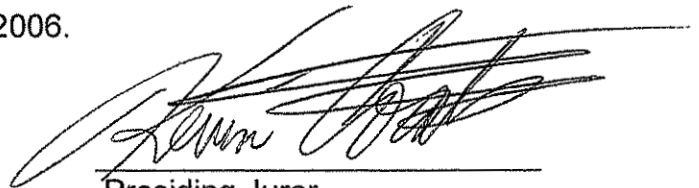
COUNT II

X Guilty of the offense of Possession Deleterious Exotic Animals
without a Permit;

OR _____ Not guilty.

Verdict -1

Dated this 24th day of August 2006.


Presiding Juror

Verdict -2

JUDGMENT
F. D. 9/8/06 AT M
CLERK OF THE DISTRICT COURT
BY DEPUTY

STATE OF IDAHO VS:
JEROME L KORN
6999 LITTLE WILLOW ROAD
PAYETTE ID 83661
SSN # DOB:
DL#

Tape No: (209) 790-1713
Defense Atty:
CITATION # Buyak
AGENCY: PAYETTE COUNTY SHERIFF DEPARTMENT

CASE # CR-2006-0001271
CHARGE: CPCC-5-6-2, Exotic Animal Violation-Prohibited Acts
AMENDED:

The Defendant, having been fully advised of his/her statutory and constitutional rights, including the right to be represented by counsel,
☐ Pleased **guilty**. ☐ Was found **guilty**. ☐ Was found **not guilty**.
☐ State moved to dismiss the charge. ☐ Charge is dismissed. ☐ Infraction default entered.
☐ Conviction is entered. ☐ Judgment is withheld.

JUDGMENT:

☐ The bond is ☐ exonerated. ☐ forfeited and case closed. ☐ to be applied to the fine and costs.

PAYMENTS: Defendant shall pay immediately, or as provided in payment agreement, as follows:

\$ 525, which includes fine and court costs. \$, suspended, **TO BE PAID IN FULL BY OR**

APPEAR ON 12-22-06 AT 2:30 P.M.

☐ Reimbursement for attorney or Public Defender \$

☐ \$ restitution to

Make payments payable to: Payette Magistrate Court, include case number, and send to 1130 3rd Ave North Rm 106, Payette, IDAHO 83661. Telephone: (208) 642-6010. All installment payments are subject to a \$2.00 handling fee.

JAIL: Defendant shall serve 180 days in jail with 150 days suspended and credit for days served.

Defendant shall report to jail 12-4-06 at 5:00 pm

☐ Work release granted in County and Defendant shall report to jail immediately to make arrangements.

☐ Sheriff's Work Detail: days in lieu of day's jail. Scheduled date(s):

If Defendant fails to report to the jail as ordered or at a time agreed upon with the jail, or fails to satisfactorily perform the Defendant's obligations with the Sheriff's Inmate Labor Detail then the sheriff is ordered and directed to place the Defendant in custody to serve the Defendant's jail time that has not been suspended.

☐ days of jail are to be served at the probation officer's discretion.

The jail sentence is ☐ concurrent ☐ consecutive with any jail sentence previously ordered.

Sheriff charges additional fees for jail, work detail and community service.

DRIVING PRIVILEGES are suspended for days / months beginning on

☐ date of this judgment. ☐

Reinstatement of driving privileges must be accomplished before you can drive. Apply to: Driver's Services, PO Box 7129, Boise, ID 83707-1129, telephone: (208) 334-8735.

☐ D.W.P. -License suspended for days / months following the end of any period of suspension, disqualification or revocation existing at the time of this offense.

PROBATION: The defendant shall be placed on ☐ supervised ☒ unsupervised probation for 24 months.

During the period of probation, all suspended penalties are subject to Defendant's compliance with all of the above orders and the following conditions. The Defendant shall:

☐ if on supervised probation, report to the Misdemeanor Probation Dept within five days of this Order and comply with all rules and reporting requirements.

☐ not refuse evidentiary test for alcohol or drugs requested by a peace officer.

☐ keep the Court informed in writing of Defendant's current mailing address and telephone number.

☒ not commit a felony or a misdemeanor.

☐ not violate conditions of No Contact Order.

☐ not operate any motor vehicle upon a public roadway unless validly licensed and insured.

☐ not operate any motor vehicle after having consumed any quantity of alcohol.

☐ Interlock Device Required.

☐ within days enroll in, and promptly complete, hours of counseling or treatment.

☐ attend ☐ N.A. meetings for weeks.

☐ A.A. meetings for weeks and provide proof of completion.

☐ perform hours of community service for to be completed by

and pay all community service fees.

☐ Payment schedule and/or terms and conditions of probation accepted.

Remove animal from Payette County as required by ordinance by 12-9-06
comply with Department of Agriculture Regulations by 12-9-06
Dated: 9-8-06 Signed: W. Miller Judge Judge No. 212

I understand that a warrant will be issued for my arrest if I fail to comply with all above conditions as ordered.

Copies to: ☒ Defendant ☐ Defense Attorney ☐ Misd Probation ☐ WIP ☒ Jail ☐ Driver Services ☐ Dispatch

JUDGMENT-1

provide all ownership records for animals to prosecutor

STATE OF IDAHO VS:
JEROME L KORN
6999 LITTLE WILLOW ROAD
PAYETTE ID 83661
SSN # [REDACTED]
DL# [REDACTED]

JUDGMENT
FILED 9/8/06 AT _____ M
CLERK OF THE DISTRICT COURT
BY PC, DEPUTY

Tape No: (209) 740-1773
Defense Atty: _____
CITATION # _____

AGENCY: PAYETTE COUNTY SHERIFF DEPARTMENT

CASE # CR-2006-0001271

CHARGE: 125-3905, Animals-Poss of Deleterious Exotic Animals w/out Permit
AMENDED: _____

The Defendant, having been fully advised of his/her statutory and constitutional rights, including the right to be represented by counsel,

- | | | |
|-------------------------------------------------------------|----------------------------------------------------|--------------------------------------------------------|
| <input type="checkbox"/> Plead guilty . | <input type="checkbox"/> Was found guilty . | <input type="checkbox"/> Was found not guilty . |
| <input type="checkbox"/> State moved to dismiss the charge. | <input type="checkbox"/> Charge is dismissed. | <input type="checkbox"/> Infraction default entered. |
| <input checked="" type="checkbox"/> Conviction is entered. | <input type="checkbox"/> Judgment is withheld. | |

JUDGMENT:

- ☐ The bond is ☐ exonerated. ☐ forfeited and case closed. ☐ to be applied to the fine and costs.

PAYMENTS: Defendant shall pay immediately, or as provided in payment agreement, as follows:

\$ 2000.00, which includes fine and court costs. \$ 2000.00, suspended, TO BE PAID IN FULL BY OR

APPEAR ON 12-22-06 AT 2:30 P.M.

☐ Reimbursement for attorney or Public Defender \$ _____

☐ \$ _____ restitution to _____

Make payments payable to: Payette Magistrate Court, include case number, and send to 1130 3rd Ave North Rm 106, Payette, IDAHO 83661. Telephone: (208)642-6010. All installment payments are subject to a \$2.00 handling fee.

JAIL: Defendant shall serve _____ days in jail with _____ days suspended and credit for _____ days served.

Defendant shall report to jail _____

☐ Work release granted in _____ County and Defendant shall report to jail immediately to make arrangements.

☐ Sheriff's Work Detail: _____ days in lieu of _____ day's jail. Scheduled date(s): _____

If Defendant fails to report to the jail as ordered or at a time agreed upon with the jail, or fails to satisfactorily perform the Defendant's obligations with the Sheriff's Inmate Labor Detail then the sheriff is ordered and directed to place the Defendant in custody to serve the Defendant's jail time that has not been suspended.

☐ _____ days of jail are to be served at the probation officer's discretion.

The jail sentence is ☐ concurrent ☐ consecutive with any jail sentence previously ordered.

Sheriff charges additional fees for jail, work detail and community service.

DRIVING PRIVILEGES are suspended for _____ days / months beginning on

☐ date of this judgment. ☐ _____

Reinstatement of driving privileges must be accomplished before you can drive. Apply to: Driver's Services, PO Box 7129, Boise, ID 83707-1129, telephone: (208)334-8735.

☐ D.W.P. [REDACTED] suspended for _____ days / months following the end of any period of suspension, disqualification or revocation existing at the time of this offense.

PROBATION: The defendant shall be placed on ☐ supervised ☒ unsupervised probation for 24 months.

During the period of probation, all suspended penalties are subject to Defendant's compliance with all of the above orders and the following conditions. The Defendant shall:

☐ If on supervised probation, report to the Misdemeanor Probation Dept within five days of this Order and comply with all rules and reporting requirements.

☐ not refuse evidentiary test for alcohol or drugs requested by a peace officer.

☐ keep the Court informed in writing of Defendant's current mailing address and telephone number.

☒ not commit a felony or a misdemeanor.

☐ not violate conditions of No Contact Order.

☐ not operate any motor vehicle upon a public roadway unless validly licensed and insured.

☐ not operate any motor vehicle after having consumed any quantity of alcohol.

☐ Interlock Device Required.

☐ within _____ days enroll in, and promptly complete, _____ hours of _____ counseling or treatment.

☐ attend ☐ N.A. meetings for _____ weeks.

☐ A.A. meetings for _____ weeks and provide proof of completion.

☐ perform _____ hours of community service for _____ to be completed by _____

and pay all community service fees.

☐ Payment schedule and/or terms and conditions of probation accepted.

☒ Remove animals from Payette County as required by 12-9-06 regulation by 12-9-06

Dated: 9-8-06

Signed: [Signature]

Judge

Judge No. 22

I understand that a warrant will be issued for my arrest if I fail to comply with all above conditions as ordered.

Defendant

Copies to: ☐ Defendant ☐ Defense Attorney ☐ Misd Probation ☐ WIP ☐ Jail ☐ Driver Services ☐ Dispatch

JUDGMENT - 1

Provide all ownership records for animals to prosecutor

FILED
THIRD JUDICIAL DISTRICT COURT
PAYETTE COUNTY, IDAHO

SEP 22 2006

BETTY J. DRESSEN, CLERK
BY DEPUTY

JOHN T. BUJAK
BUJAK LAW, P.L.L.C.
826 Third Street South
Nampa, ID 83651
Phone: (208) 468-9202
Fax: (208) 468-9203
Idaho State Bar No. 5544

Attorney for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF PAYETTE

STATE OF IDAHO,

Plaintiff,

vs.

JEROME L. KORN,

Defendant.

CASE NO. CR-2006-1271

MOTION FOR NEW TRIAL

COMES NOW, JEROME KORN, Defendant, by and through his attorney, JOHN T. BUJAK, and hereby moves this honorable Court, pursuant to I.C. § 19-2406 and I.C.R. 34, for its order vacating the Judgment entered in the above-captioned case and granting the Defendant a new trial.

This Motion is based upon the following:

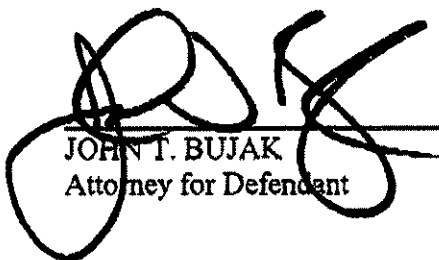
1. The Defendant believes that the Court erred in the decision of a question of law regarding the introduction of evidence at trial.

MOTION FOR NEW TRIAL

1

2. The verdict in this case is contrary to law and/or evidence.
3. The Defendant will submit a memorandum of authorities prior to hearing to further explain and support his position.
4. The Defendant respectfully requests and opportunity to present testimony, evidence, and argument on this Motion.

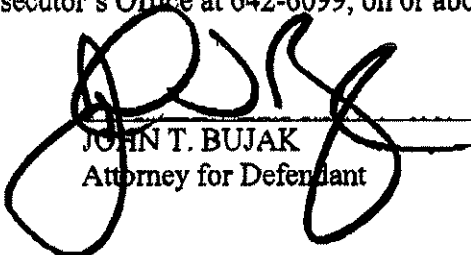
DATED this 22 day of September, 2006.



JOHN T. BUJAK
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was delivered to the Plaintiff by faxing said copy to the Payette County Prosecutor's Office at 642-6099, on or about the 22 day of September, 2006.



JOHN T. BUJAK
Attorney for Defendant

FILED
THIRD JUDICIAL DISTRICT COURT
PAYETTE COUNTY, IDAHO

OCT 20 2008

BETTY J. DRESSEN, CLERK
BY DEPUTY

JOHN T. BUJAK
BUJAK LAW, P.L.L.C.
826 Third Street South
Nampa, ID 83651
Phone: (208) 468-9202
Fax: (208) 468-9203
Idaho State Bar No. 5544

Attorney for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF PAYETTE

STATE OF IDAHO,)	
)	
Plaintiff,	)	CASE NO. CR-2006-1271
)	
vs.	)	NOTICE OF APPEAL
)	
JEROME L. KORN,)	
Defendant.)	
_____)	

COMES NOW, JEROME L. KORN, Defendant, by and through his attorney, John T. Bujak, and does hereby file his Notice of Appeal pursuant to I.C.R. 54.4. Pursuant to I.C.R. 54.4, the Defendant asserts the following:

1. The title of the action or proceeding from which this appeal is taken is *State of Idaho vs. Jerome L. Korn.*
2. The action from which this appeal is taken was heard before the Magistrate Division of the District Court for the Third Judicial District in and for the County

NOTICE OF APPEAL

1

of Payette, the Honorable William B. Dillon, Magistrate Judge, presiding.

3. The case number assigned to the action from which this appeal is taken is CR-2006-1271.
4. The appeal is taken to the District Court of the Third Judicial District in and for the County of Payette.
5. This appeal is taken from the Judgment of Conviction entered by the Honorable William B. Dillon, Magistrate Judge, on September 8, 2006, and from the Order denying the Defendant's Motion to Dismiss entered on August 4, 2006.
6. This appeal is taken upon both matters of law and fact.
7. The testimony and proceedings in the original trial were recorded on audio tape. Said audio tape recording is in the possession of the Payette County Clerk.
8. This issues on appeal include, but are not limited to the following:
 - a. Did the trial court err and abuse its discretion by not applying the correct legal standard in ruling on the Defendant's Motion to Dismiss and thereafter denying the same?
 - b. Did the trial court err and abuse its discretion by failing to allow the admission of bankruptcy court orders into evidence at trial?

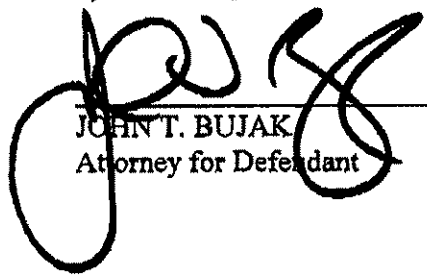
DATED this 20 day of October, 2006.

Respectfully Submitted.

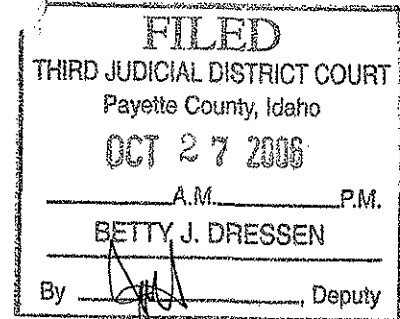

JOSEPH T. BUJAK
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Appeal was delivered to the Plaintiff by faxing said copy to the Payette County Prosecutor's Office, on or about the 28 day of October, 2006.



JOHN T. BUJAK
Attorney for Defendant




IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE

STATE OF IDAHO,	)	Case No.: CR-2006-1271-C
Plaintiff/Respondent,)	
vs.	)	ORDER OF ASSIGNMENT
JEROME L. KORN,)	
Defendant/Appellant.)	
_____)	

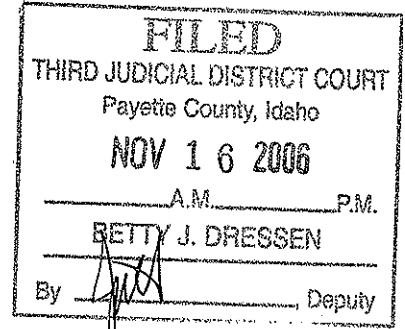
Appeal in the above-entitled Payette County case is hereby assigned to the Honorable
RENAE J. HOFF for appellate decision or as otherwise ordered.

Dated: October 26, 2006

GREGORY M. CULET
Administrative District Judge

By:  Trial Court Administrator

cc: Brian Lee, 1130 Third Avenue North, Room #105, Payette, ID 83661
John T. Bujak, 826 Third Street South, Nampa, ID 83651
Hon. Renae J. Hoff
Jennifer Brown



IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE

STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-2006-1271
)	
vs.)	
	)	ORDER FOR PREPARATION
JEROME KORN,	)	OR TRANSCRIPT AND
	)	APPELLATE SCHEDULING
Defendant.)	
)	
)	

Upon review of this file, this Court finds that an appeal has been timely filed in the above entitled action by appellant on October 20, 2006, and assigned to this Court on October 27, 2006. Further this Court finds that the matter shall be heard as an appellate proceeding pursuant to Idaho Criminal Rule 54 and that questions of law and fact are involved. Transcripts of the following proceedings are necessary to resolve the questions of law and fact:

- 1) **The transcript of the entire hearing on the Motion to Dismiss held on August 4, 2006 before Judge Dillon**

And

- 2) **The transcript of the trial held on August 24, 2006, before Judge Dillon, tape numbers (191), (192), (193), and (194).**

IT IS HEREBY ORDERED, pursuant to I.C.R. 54.7, that the transcripts shall be prepared after the Appellant has paid the estimated fee. The transcriber shall prepare and lodge the transcripts within thirty-five (35) days from the date of payment of the estimated fee. The transcriber will be granted an extension of time only upon a showing of good cause.

IT IS FURTHER ORDERED pursuant to I.C.R. 54.9, that the Clerk of the Court shall notify the counsel of both parties in writing upon the lodging of the transcripts. If no objection is filed within twenty-one (21) days from the date of the mailing of the notice to the parties that the transcripts have been lodged with the court then, the transcripts are deemed settled.

IT IS FURTHER ORDERED, pursuant to I.C.R. 54.10, that within seven (7) days after the settlement of the transcripts the Clerk of the Court shall file with the District Court the transcripts. The Clerk of the Court shall give notification of such filing to all the parties or their attorneys. Pursuant to I.C.R. 54.8, no copies of the Clerk's record need be prepared unless ordered by the Magistrate or by the District Court.

IT IS FURTHER ORDERED, pursuant to I.C.R. 54.11, that any party desiring to augment the settled transcripts or record may file a motion with the district court in the same manner and pursuant to the same procedure provided for augmentation of the

record in appeals to the Supreme Court. The filing of a motion to augment shall not suspend or stay the appellate process or the briefing schedule.

IT IS FURTHER ORDERED, pursuant to 54.15 and I.A.R. 34, that within thirty-five (35) days of the date of notice that the transcripts have been filed, the Appellant's brief must be lodged with copies served upon Respondent; that within twenty-eight (28) days of service of the Appellant's brief, the Respondent's brief, must be lodged with copies served upon the Appellant; and, that within twenty-one (21) days after the service of Respondent's brief, the Appellant's reply brief, if any, must be lodged with copies served upon Respondent.

IT IS FURTHER ORDERED that the Clerk of the Court shall serve copies of this order upon counsel for the parties.

After all briefs have been received, the Court will decide whether oral argument is necessary.

Dated:

NOV 14 2006



Renae J. Hoff
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order For Preparation of Transcript and Appellate Scheduling is forwarded to the following persons on NOV 16 2006 2006.

John Bujak

826 Third Street South
Nampa, Idaho 83651

☒ U.S. Mail
☐ Courthouse basket

Payette County Prosecuting Attorney's Office

Payette County Courthouse
Payette, Idaho 83661


☒ Courthouse basket

Payette County Appeals Clerk

Payette County Courthouse
Payette, Idaho 83661

☒ Courthouse basket

CLERK OF THE COURT



Deputy Clerk

FILED
THIRD JUDICIAL DISTRICT COURT
PAYETTE COUNTY, IDAHO

DEC 01, 2006

BETTY J. DRESSEN, CLERK
BY _____ DEPUTY

JOHN T. BUJAK
BUJAK LAW, P.L.L.C.
826 Third Street South
Nampa, ID 83651
Phone: (208) 468-9202
Fax: (208) 468-9203
Idaho State Bar No. 5544

Attorney for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF PAYETTE

STATE OF IDAHO,
Plaintiff,

vs.

JEROME L. KORN,
Defendant.

CASE NO. CR-2006-1271

**MOTION TO ADMIT DEFENDANT
TO BAIL PENDING APPEAL**

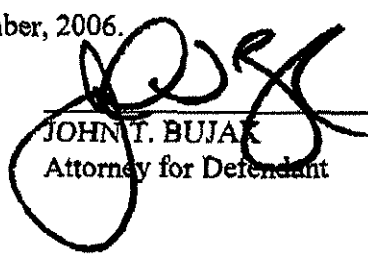
COMES NOW, JEROME L. KORN, Defendant, by and through his attorney, JOHN T. BUJAK, and hereby moves this honorable Court, pursuant to I.C. § 19-3941 and I.C.R. 46(b), for its order admitting the Defendant to bond in an amount sufficient to guarantee the payment of any judgment, fine and costs that may be awarded against him on appeal, and that he will faithfully prosecute the same and render himself in execution of any judgment or order rendered or entered against him in the District Court.

This Motion is based upon the following:

MOTION TO ADMIT DEFENDANT
TO BAIL PENDING APPEAL

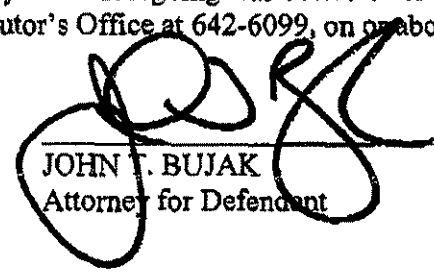
1. The Court entered a Judgment of Conviction against the Defendant in the above-captioned case on September 8, 2006.
2. The Defendant appealed the Court's Judgment of Conviction on October 20, 2006.
3. The Defendant wishes to stay the execution of the Judgment of Conviction pending the appeal pursuant to law.
4. In considering the factors set forth pursuant to I.C. § 19-3941 and I.C.R. 46, the Defendant submits that it would be just and appropriate to admit the Defendant to an appellate bond in the amount of \$1,000.00.

DATED this 1 day of December, 2006.

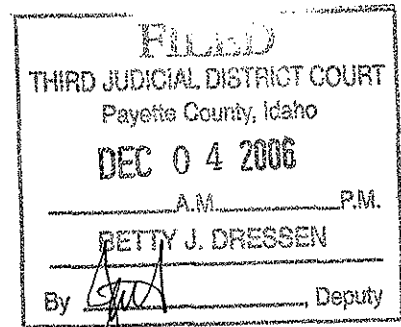

JOHN T. BUJAK
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was delivered to the Plaintiff by faxing said copy to the Payette County Prosecutor's Office at 642-6099, on or about the 1 day of December, 2006.


JOHN T. BUJAK
Attorney for Defendant

MOTION TO ADMIT DEFENDANT
TO BAIL PENDING APPEAL



JOHN T. BUJAK
 BUJAK LAW, P.L.L.C.
 826 Third Street South
 Nampa, ID 83651
 Phone: (208) 468-9202
 Fax: (208) 468-9203
 Idaho State Bar No. 5544

Attorney for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
 STATE OF IDAHO IN AND FOR THE COUNTY OF PAYETTE

STATE OF IDAHO,
 Plaintiff,

vs.

JEROME L. KORN,
 Defendant,

CASE NO. CR-2006-1271

**ORDER ADMITTING THE
 DEFENDANT TO BAIL ON
 APPEAL**

THIS MATTER came before the Court upon the Defendant's Motion to Admit Defendant to Bail Pending Appeal. The Court, having reviewed the file in the above-captioned case, as well as the applicable law, and being fully informed in the premises, finds good cause to grant the Defendant's request as follows. Accordingly,

IT IS ORDERED THAT:

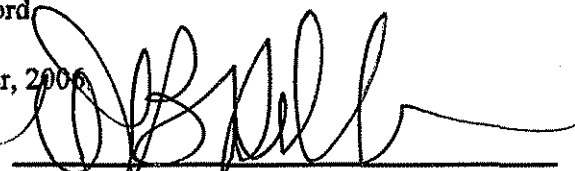
1. The Defendant's Motion to Admit the Defendant o Bond Pending Appeal is
 GRANTED.

ORDER ADMITTING THE
 DEFENDANT TO BAIL ON
 APPEAL

2. After having considered the factors pursuant to I.C. § 19-3941 and I.C.R. 46, the Court finds that the Defendant should be admitted to an appellate bond in the amount of \$ 1,500⁰⁰.

3. The Clerk of the Court shall cause a true and correct copy of this Order to be delivered to the legal counsel of record.

DATED this 4 day of December, 2006.


WILLIAM B. DILLON
Magistrate Judge

CERTIFICATE OF DELIVERY

I HEREBY CERTIFY that I did cause a true and correct copy of the foregoing to be delivered to the following individuals via the method indicated and on the date indicated below:

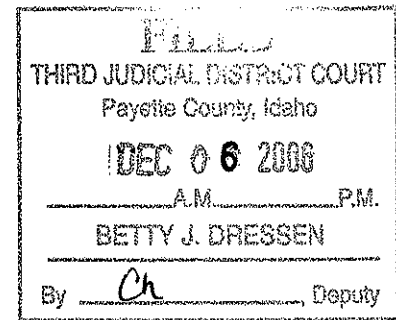
Payette County Prosecutor -- Courthouse Basket

John T. Bujak
Bujak Law, PLLC
Fax. (208) 468-9203 -- Facsimile

DATED this 4 day of December, 2006.


Deputy Clerk of Court

ORDER ADMITTING THE
DEFENDANT TO BAIL ON
APPEAL



JOHN T. BUJAK
 BUJAK LAW, P.L.L.C.
 826 Third Street South
 Nampa, ID 83651
 Phone: (208) 468-9202
 Fax: (208) 468-9203
 Idaho State Bar No. 5544

Attorney for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
 STATE OF IDAHO IN AND FOR THE COUNTY OF PAYETTE

STATE OF IDAHO,)	
)	
Plaintiff,	)	CASE NO. CR-2006-1271
)	
vs.	)	MOTION TO STAY EXECUTION OF
	)	JUDGMENT
JEROME L. KORN,)	
)	
Defendant.)	
_____)	

COMES NOW, JEROME L. KORN, Defendant, by and through his attorney, JOHN T. BUJAK, and hereby moves this honorable Court, pursuant to I.C. § 19-3941, I.C.R. 46(b), and I.C.R. 54.5, for its order staying the execution of the Judgment of Conviction entered against the Defendant in the above-captioned case on August 3, 2006, pending the outcome of the Defendant's appeal.

This Motion is based upon the following:

1. The Court entered a Judgment of Conviction against the Defendant in the above-

MOTION TO STAY EXECUTION OF
 JUDGMENT

captioned case on September 8, 2006.

2. The Defendant appealed the Court's Judgment of Conviction on October 20, 2006.
3. The Defendant wishes to stay the execution of the Judgment of Conviction pending the appeal pursuant to law.
4. The Court admitted the Defendant to an appellate bond in the amount of \$1,500.00 on December 4, 2006. The Defendant has posted a cash appellate bond with the Court.
5. In reviewing the requirements of I.C. § 19-3941, I.C.R. 46(b) and I.C.R. 54.5, it is appropriate to stay execution of the Judgment at this time.

DATED this 6 day of December, 2006.

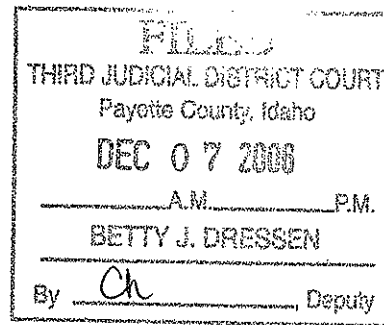

JOHN T. BUJAK
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was delivered to the Plaintiff by faxing said copy to the Payette County Prosecutor's Office at 642-6099, on or about the 6 day of December, 2006.


JOHN T. BUJAK
Attorney for Defendant

MOTION TO STAY EXECUTION OF
JUDGMENT



JOHN T. BUJAK
 BUJAK LAW, P.L.L.C.
 826 Third Street South
 Nampa, ID 83651
 Phone: (208) 468-9202
 Fax: (208) 468-9203
 Idaho State Bar No. 5544

Attorney for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
 STATE OF IDAHO IN AND FOR THE COUNTY OF PAYETTE

STATE OF IDAHO,

Plaintiff,

vs.

JEROME L. KORN,

Defendant.

CASE NO. CR-2006-1271

**ORDER STAYING EXECUTION OF
 JUDGMENT PENDING APPEAL**

THIS MATTER came before the Court upon the Defendant's Motion to Stay Execution of Judgment. The Court, having reviewed the file in the above-captioned case, as well as the applicable law, and being fully informed in the premises, finds good cause to grant the Defendant's request as follows. Accordingly,

IT IS ORDERED THAT:


1. The Defendant's Motion to Stay Execution of Judgment is GRANTED.
2. Execution of the Judgment of Conviction entered against the Defendant in the

ORDER STAYING EXECUTION OF
 JUDGMENT PENDING APPEAL

above-captioned case on September 8, 2006, is hereby STAYED pending the outcome of the Defendant's appeal or further order of the Court.

3. The Clerk of the Court shall cause a true and correct copy of this Order to be delivered to the legal counsel of record.

DATED this 1 day of December, 2006.


WILLIAM B. DILLON
Magistrate Judge

CERTIFICATE OF DELIVERY

I HEREBY CERTIFY that I did cause a true and correct copy of the foregoing to be delivered to the following individuals via the method indicated and on the date indicated below:

Payette County Prosecutor -- Courthouse Basket

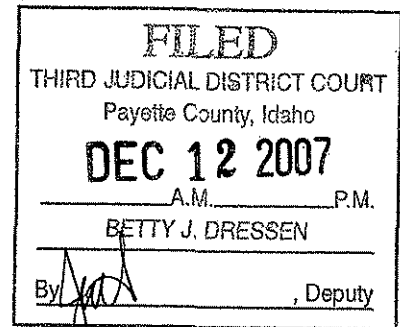
John T. Bujak
Bujak Law, PLLC
Fax: (208) 468-9203 -- Facsimile

DATED this 7th day of December, 2006.

PCSO


Deputy Clerk of Court

ORDER STAYING EXECUTION OF
JUDGMENT PENDING APPEAL



IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE

STATE OF IDAHO,)	
)	
Plaintiff/Respondent,	)	Case No. CR-2006-1271
)	
vs.)	
	)	APPELLATE DECISION
JEROME KORN,)	
)	
Defendant/Appellant.)	
)	

COURSE OF PROCEEDINGS

Appellant has filed an appeal challenging the trial court's decision denying his motion to dismiss. He also challenges the trial court's decision overruling his motion to admit evidence at trial. Appellant filed his motion to dismiss on April 19, 2006. He alleged that the ordinance was unconstitutional. On August 4, 2006, a hearing was held and the trial court denied the motion. A jury convicted Appellant on August 24, 2006 of Possession of Wild or Exotic Animals and Possession of Deleterious Exotic Animals

without a Permit. At trial appellant attempted to admit two bankruptcy documents, but the trial court overruled their admission, citing "lack of foundation". Upon review of this file, this Court finds that an appeal has been timely filed in the above-entitled action by appellant on October 20, 2006, and assigned to this Court on October 27, 2006. Briefs were filed by both parties.

STATEMENT OF FACTS

Prior to this litigation, Appellant lived in Nampa, Canyon County, Idaho, where he operated a private zoo with his ex-wife. In 2004 Appellant filed for bankruptcy and he was ordered to remove the animals from the Nampa property. *Motion to Dismiss, Tr. p. 6-10*. Appellant decided to move his animals to Payette County. It is unclear from the record when this decision was made. Appellant testified that at the time he decided to move the animals, there was no ordinance prohibiting exotic animals. For purposes of deciding this case on appeal, this Court will assume Appellant made his decision prior to April 25, 2005, which was the date when the Payette County Board of Commissioners was informed that a man wished to bring exotic animals into the community. *Motion to Dismiss Hearing, Exhibit 4*. On May 16, 2005 the Payette County Commissioners passed ordinance 2005-4, which prohibited the possession of certain exotic animals. *Motion to Dismiss Hearing, Exhibit 1*. The same ordinance was again passed on May 23, 2005. *Id.* The ordinance was published and became effective on June 1, 2005. *Motion to Dismiss Hearing, Exhibit 2*.

Appellant asserts that he entered into a contract with his mother and a development company, "DDR" to construct the facility that would house the animals.

Motion to Dismiss, Tr. p. 10-15. Appellant also testified that construction began on May 5, 2005, with appellant's mother paying for the costs. *Motion to Dismiss, Tr. p. 30-31.* On July 5, 2005, Appellant met with the Board and told them he had a license from the Idaho Department of Fish and Game for the animals. However the license was only for the Nampa property. *Motion to Dismiss, Tr. p. 18, 26-27.* Appellant testified that DDR took over construction in August of 2005. *Motion to Dismiss, Tr. p. 30.* On January 25, 2006, the Idaho Department of Agriculture sent the appellant an application for a Deleterious Exotic Possession Permit. On February 23, 2006, the application was denied. *Jury Trial, Plaintiff's Exhibit 2.* On March 13, 2006, a deputy with the Payette County Sheriff's office served the appellant with a notice to abate and remove his exotic animals. *Jury Trial, Plaintiff's Exhibit.* Appellant did not comply, and on April 19, 2006, a criminal complaint was filed.

On August 4, 2006, the trial court heard and denied Appellant's Motion to Dismiss the charges. On August 24, 2006, a jury trial was held on the charges of Possession of Wild or Exotic Animals and Possession of Deleterious Exotic Animals without a Permit. Appellant offered Exhibit E (Order Approving and Confirming the Sale of the Nampa Real Estate from the Debtor to DDR Outside the Ordinary Course of Business) into evidence at the jury trial. The trial judge determined that the document was inadmissible because it was not a certified copy. *Jury Trial, Tr. p. 165-166.* Appellant next offered to admit Exhibit F (The Order Releasing Funds) into evidence at jury trial. *Jury Trial Tr. p. 167-168.* When Exhibit F was handed to the appellant, he stated that, "I saw so many of those, I honestly don't know which one it is you have." *Jury Trial tr. p. 156, l. 13.* The trial court found that Appellant did not sufficiently

authenticate Exhibit F as required, so admission was denied. *Jury Trial Tr. p. 167-168.* The jury found appellant guilty on both charges and declined to allow the necessity defense to excuse his conduct.

I. The Denial of Appellant's Motion to Dismiss

Appellant is challenging the ruling of the trial court on his motion to dismiss which alleged constitutional violations. The appellant brought his motion to dismiss, which asserted that ordinance 2005-4 violated the contract clause of both the state and federal constitutions. The motion to dismiss was denied by the trial court and appellant was subsequently convicted at a jury trial, and this appeal followed.

A. Standard of Review

Constitutional issues are purely questions of law over which appellate courts exercise free review. *Meisner v. Potlatch Corp.*, 131 Idaho 258, 260 (1998). "When this Court considers a claim that a statute is unconstitutional, we review the trial court's ruling *de novo* since it involves purely a question of law." *State v. Hansen*, 125 Idaho 927, 930 (1994). There is a strong presumption of the validity of an ordinance and an appellate court is obligated to seek an interpretation of a statute that upholds its constitutionality. *State v. Cobb*, 132 Idaho 195, 197 (1998)(internal citations omitted).

B. Law and Analysis

Appellant alleges that the passage of the county ordinance was a violation of the Contracts Clause to the United States Constitution. Art. 1 § 10, U.S. Constitution

provides, "No State shall ... pass any ... Law impairing the Obligation of Contracts..."

In Idaho, parties to a contract have a property interest in the subject matter of the contract that is protectable both under the Contracts Clause and the Due Process Clause of the United States Constitution. *Curr v. Curr*, 124 Idaho 686, 691-692 (1993). Any enactment of a legislative character 'impairs' the obligation of a contract, when the legislation attempts to take from a party a right to which he is entitled by the contracts terms, or which deprives him of the means of enforcing such a right. *Sanderson v. Salmon River Canal Co.*, 263 P. 32, 36 (Idaho 1927). The general rule is that a statute, which does not act on the contract itself, but merely on the property that is the subject of the contract, does not impair the obligation of the contract. *Id.* The value of the contract may be diminished, but the obligation of the parties to each other is not affected in the slightest degree. *Id.* "Nor does every statute which affects the value of a contract impair its obligation. It is one of the contingencies to which parties look now in making a large class of contracts, that they may be affected in many ways by state and national legislation." *Id.*

The U.S. Supreme Court has held that if the state regulation constitutes a substantial impairment to contract obligations, the State, in justification, must have a significant and legitimate public purpose behind the regulation, such as the remedying of a broad and general social or economic problem. *Energy Reserves Group, Inc. v. Kansas Power and Light Co.*, 459 U.S. 400, 103 S.Ct. 697, 704 - 705 (1983) (internal citations omitted). The threshold inquiry is "whether the state law has, in fact, operated as a substantial impairment of a contractual relationship." *Id.* The severity of the impairment is said to increase the level of scrutiny to which the legislation will be subjected. *Id.*

Total destruction of contractual expectations is not necessary for a finding of substantial impairment. *Id.* On the other hand, state regulation that restricts a party to gains it reasonably expected from the contract does not necessarily constitute a substantial impairment. *Id.* The Supreme Court long ago observed: "One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the State by making a contract about them." *Id.*

"Once a legitimate public purpose has been identified, the next inquiry is whether the adjustment of "the rights and responsibilities of contracting parties [is based] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying [the legislation's] adoption." Unless the State itself is a contracting party, "[a]s is customary in reviewing economic and social regulation ... courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure." *Energy Reserves Group, Inc. v. Kansas Power and Light Co.* 459 U.S. 400, 412-413, 103 S.Ct. 697, 703 - 706 (1983)(internal citations omitted).

Appellant argues that the trial court did not use the proper analysis under the Contract Clause when it denied the motion to dismiss. The trial court found that Appellant was not entitled to keep exotic animals on the subject land because he did not have the necessary permits from the state or federal government. Appellant did have the necessary permits for his zoo at his former property in Nampa, which is located in Canyon County.

This Court is required to first determine if there was a substantial impairment to the contract. In order to find impairment, it must be shown that the county took away a right that the appellant was entitled to have. The appellant decided to commence

construction on his facility before obtaining the necessary permits. Appellant testified at the Motion to Dismiss hearing, that he was told by the Idaho Agriculture Department that the permit he had previously held in Nampa would be approved for his facility in Payette. *Motion to Dismiss, Tr. p. 28-29.* At the time of the hearing, appellant had failed to obtain this permit and he claimed that the Idaho Agriculture Department reneged on its promise and refused to approve it. *Id.* However, there is no substantial impairment to a contract when the appellant is unable to show that he has a right to the conduct he has engaged in. A permit from the State Agriculture Department is required to possess deleterious animals, this permit was never obtained; therefore the appellant's alleged right to construct facilities and house exotic animals did not exist at the time the ordinance was passed or at the time of his jury trial. Although appellant is unable to keep all of the animals he owns at his facility, he is still allowed to keep animals that are native to the area. The value of the contract may have been diminished because appellant cannot house the exotic animals, but this does not constitute a total destruction of contract expectations or a substantial impairment. Non-exotic animals can be housed at this location. Appellant fails to show substantial impairment of the contract between himself, his mother and DDR. Therefore this Court upholds the trial court's finding of no substantial impairment under state and federal case law.

The trial court in ruling on the motion to dismiss, next analyzed the purpose behind the enactment of the ordinance. In doing so, the trial court, for analysis purposes, assumed that a substantial impairment existed. The trial court found that the ordinance was enacted to protect citizens from animals that can be dangerous. The trial court further found that the protection of the public was a legitimate public purpose for

enactment of the ordinance. This Court finds that the ordinance does not substantially impair the contract; therefore no analysis of a legitimate public purpose is required. The trial court's decision to deny the motion to dismiss is affirmed.

II. The denial of admission of the bankruptcy documents at trial.

Appellant is next challenging the exclusion of bankruptcy documents into evidence at his jury trial. The trial court excluded admission of these documents because no foundation was laid and the United States Bankruptcy Court did not certify them. Appellant alleges that because these documents were not allowed into evidence, it prejudiced his necessity defense. Appellant contends that the Bankruptcy Court, by the contents of the documents mandated him to move his exotic animals from Canyon County to Payette County.

A. Standard of Review

Trial courts have broad discretion when ruling on the admissibility of evidence before them. *Appel v. LePage*, 135 Idaho 133, 135 (2000). This Court will only disturb a trial court's discretion to admit evidence upon "a clear showing of abuse. Even if the trial court used its discretion in error, such error, alone, does not constitute grounds for reversal. Unless an error "affect[s] substantial rights" of the parties, it should be disregarded. I.C.R. 52. "An error is harmless if this Court is able to say, beyond a reasonable doubt, that the jury would have reached the same result absent the error. The burden of showing prejudicial error rests on the party asserting such error." *State v. Sandoval-Tena*, 138 Idaho 908, 911 (2003). "The test for harmless error ... is whether a

reviewing court can find beyond a reasonable doubt that the jury would have reached the same result without the admission of the challenged evidence.” *Giles v. State*, 125 Idaho 921, 925 (1994).

B. Authentication of documents

“Physical items ... must be authenticated before they may be admitted into evidence. Rule 901 provides that ‘[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.’ Further Rule 901 provides that, authentication may be presented, for example, through the testimony of a witness with knowledge that a matter is what it is claimed to be.” *Alderson v.*

Bonner, 142 Idaho 733, 738 (Ct. App. 2006)(internal citations omitted).

Proof of a chain of custody is not a separate requirement for admissibility. *State v. Fee*, 124 Idaho 170, 175 (Ct.App.1993).

“Ordinarily, the party offering an exhibit establishes its chain of custody in order to create a presumption that it was not materially altered. If the chain of custody has been broken, however, the party can still rely upon other evidence to show a lack of material alteration.” *State v. Crook*, 98 Idaho 383, 384 (1977). The defendant carries the burden of establishing that the evidence was tampered or meddled with in order to overcome the presumption that the integrity of the evidence has not been disturbed. *State v. Kodesh*, 122 Idaho 756, 757 (1992). The standard for admissibility of evidence is whether the trial court can determine, in all reasonable probability, the proffered exhibit has not been changed in any material respect. *Id.* Mere speculation that the evidence was mishandled

or tampered with is insufficient to establish a break in the chain of custody. *Id.* at 758. Generally, in laying a proper foundation for admission of evidence the practicalities of proof do not require the prosecution to negate all possibilities of substitution or tampering. *Dachlet v. State*, 136 Idaho 752, 756 (2002).

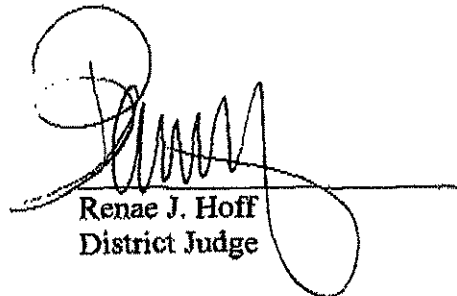
Appellant further argues that the bankruptcy documents should have been admitted under I.R.E. 106, which provides: "When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require that party at that time to introduce any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it."

The trial court declined to admit the bankruptcy documents because they were not certified and a proper foundation was not laid to admit them. Appellant was questioned about the documents. However, the trial court determined that Appellant was unable to identify them as required for authentication under I.R.E. 901. When appellant was questioned about the contents of the documents, he was unsure what the documents stated. When Exhibit E (Order Approving and Confirming the Sale of the Nampa Real Estate from the Debtor to DDR Outside the Ordinary Course of Business) was offered into evidence, the trial judge ruled it inadmissible since it was not a certified copy. The appellant testified that he recognized the order, which may have been enough to authenticate the order under IRE 901. Conversely, when Exhibit F (The Order Releasing Funds) was offered for admission the appellant stated that, "I saw so many of those, I honestly don't know which one it is you have." *Jury Trial Tr. p. 156 l. 13* Appellant did not sufficiently authenticate Exhibit F as required; therefore the trial court did not abuse its discretion in excluding it. On the other hand, assuming Exhibit E should have been

admitted into evidence, the failure to do so is harmless error. The jury had the benefit of hearing the appellant's testimony about the contents of the Exhibit E even though the document was not admitted into evidence. The jury also had the benefit of hearing appellant's testimony that he believed the bankruptcy order required him to move the animals from Canyon County to Payette County. The jury was properly instructed on the defense of necessity. However the jury concluded that the necessity defense did not excuse Appellant's criminal conduct. The failure to admit Exhibit E was harmless error and the trial court's decision on the bankruptcy documents is affirmed.

Dated:

DEC 12 2007



Renae J. Hoff
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Appellate Decision is forwarded to the following persons on Dec. 13, 2007.

John Bujak
826 Third Street South
Nampa, Idaho 83651

X U.S. Mail
 Courthouse basket

Payette County Prosecuting Attorney's Office
Payette County Courthouse
Payette, Idaho 83661

X Courthouse basket


Payette County Appeals Clerk
Payette County Courthouse
Payette, Idaho 83661

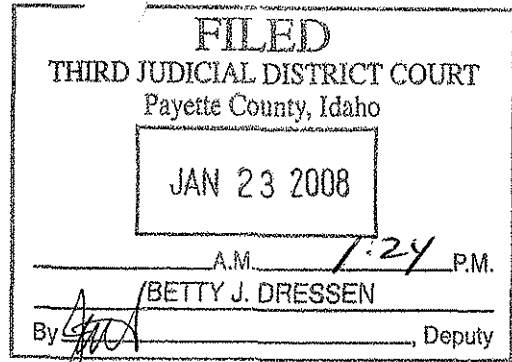
X Courthouse basket

The Honorable William B. Dillon

X Courthouse basket

BETTY J. DRESSEN
CLERK OF THE COURT


Deputy Clerk



JOHN T. BUJAK
BUJAK LAW, P.L.L.C.
826 Third Street South
Nampa, ID 83651
Phone: (208) 468-9202
Fax: (208) 468-9203
Idaho State Bar No. 5544

Attorney for Defendant/Appellant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF PAYETTE

STATE OF IDAHO,)	
Plaintiff/Respondent,	)	CASE NO. CR-2006-1271
)	
vs.	)	NOTICE OF APPEAL
)	
JEROME KORN,)	
Defendant/Appellant.)	
_____)	

**TO: CLERK OF THE ABOVE-ENTITLED COURT and STATE OF IDAHO,
Plaintiff/Respondent, and its attorney, the PAYETTE COUNTY
PROSECUTING ATTORNEY and IDAHO STATE ATTORNEY
GENERAL**

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellant, JEROME KORN, appeals against the above-named Respondent to the Idaho Supreme Court from the Appellate Decision, entered by the Honorable Renae Hoff, District Judge, on December 12, 2007.
2. The Appellant has the right to appeal to the Idaho Supreme Court, and the

NOTICE OF APPEAL

1

Appellate Decision described in paragraph 1 above is an appealable order under and pursuant to Rule 11(c)(10), I.A.R.

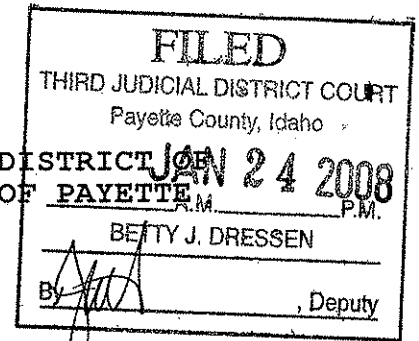
3. The Appellant provides the following preliminary statement of issues on appeal:
 - a. Did the trial court err and abuse its discretion by not applying the correct legal standard in ruling on the Defendant's Motion to Dismiss and thereafter denying the same?
 - b. Did the trial court err and abuse its discretion by failing to allow the admission of bankruptcy court orders into evidence at trial?
4. No orders have been entered sealing all or any portion of the record.
5. Appellant requests that the reporter's standard transcript as defined by I.A.R. 25(a) be prepared.
6. The Appellant requests that the following documents be included in the clerk's record in addition to those automatically included pursuant to I.A.R. 28.
 - a. None.
7. I hereby certify:
 - a. That a copy of this Notice of Appeal has been served on the reporter.
 - b. That the Clerk of the District Court has been paid the estimated fee for preparation of the reporter's transcript.
 - c. That the estimated fee for preparation of the clerk's record has been paid.
 - d. That service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED this 23 day of January, 2008.



JOHN T. BUJAK
Attorney for Defendant/Appellant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE



STATE OF IDAHO,
Plaintiff/Respondent,

CLERK'S CERTIFICATE OF APPEAL

Vs.

JEROME L. KORN,
Defendant/Appellant.

CASE NUMBER: CR-2006-0001271

SUPREME COURT # _____

Appeal from: Third Judicial District, County of Payette, Canyon
County District Judge, Honorable Renae J. Hoff, presiding.

Case Number from court: Magistrate Court: CR-2006-0001271

Order or judgment appealed from: **APPELLATE DECISION ENTERED ON
December 12, 2007.**

Attorney for Appellant/Defendant: John Bujak, Bujak Law Office.

Attorney for Respondent: State of Idaho, Attorney General

Appealed by: Defendant - John Bujak, Bujak Law Office

Appealed Against: The State of Idaho

Notice of Appeal Filed: January 23, 2008

Notice of Cross-Appeal Filed: _____

Amended Notice of Cross Appeal Filed: _____

Appellate Fee Paid: No. Criminal Appeal

Respondent or Cross-Respondent's request for additional record
filed: _____


Respondent or Cross-Respondent's request for additional Reporter's
Transcript filed _____

Was District Court Reporter's Transcript requested? **YES**


If so Name of Reporter: Tami Weber, Canyon Transcription, prepared
transcript per District Court order.

CLERK'S CERTIFICATE OF APPEAL page-1-

DATE: January 24, 2008
Betty J. Dressen
Clerk of the District Court

By:  _____
Deputy Clerk

In the Supreme Court of the State of Idaho

FILED	
THIRD JUDICIAL DISTRICT COURT	
Taylorsville County, Idaho	
JAN 31 2008	
A.M. P.M.	
BETTY J. DRESSEN	
By 	Deputy

STATE OF IDAHO,

Plaintiff-Respondent,

v.

JEROME L. KORN,

Defendant-Appellant.

ORDER

NO. 34965

The Notice of Appeal in the above captioned matter filed in this Court January 29, 2008, requested that a Reporter's Transcript be prepared. However, the Notice of Appeal failed to comply with Idaho Appellate Rule 17 in that it did not specify by date and title the hearings required to be prepared for purposes of this Appeal; therefore, good cause appearing,

IT HEREBY IS ORDERED that Appellant shall file an AMENDED NOTICE OF APPEAL which complies with Idaho Appellate Rule 17, and shall specify by date and title the hearing(s) required to be prepared for purposes of this Appeal.

IT FURTHER IS ORDER that Appellant shall serve the Reporter(s) with a copy of the Amended Notice of Appeal and shall indicate in the Amended Notice of Appeal which reporter(s) was served.

IT FURTHER IS ORDERED the Amended Notice of Appeal shall be filed with the District Court within fourteen (14) days from the date of this Order. In the event an Amended Notice of Appeal is not filed, this appeal may proceed on the Clerk's Record ONLY.

IT FURTHER IS ORDERED that this appeal is SUSPENDED until further notice.

DATED this 29th day of January 2008.

For the Supreme Court



Dorothy Beaver, Deputy Clerk for
Stephen W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk
District Court Reporter

JOHN T. BUJAK
BUJAK LAW, P.L.L.C.
826 Third Street South
Nampa, ID 83651
Phone: (208) 468-9202
Fax: (208) 468-9203
Idaho State Bar No. 5544

FILED
THIRD JUDICIAL DISTRICT COURT
Payette County, Idaho
FEB 12 2008
4:57
A.M. P.M.
BETTY J. DRESSEN
By *[Signature]* Deputy

Attorney for Defendant/Appellant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF PAYETTE

STATE OF IDAHO,
Plaintiff/Respondent,

vs.

JEROME KORN,
Defendant/Appellant.

CASE NO. CR-2006-1271

AMENDED NOTICE OF APPEAL

**TO: CLERK OF THE ABOVE-ENTITLED COURT and STATE OF IDAHO,
Plaintiff/Respondent, and its attorney, the PAYETTE COUNTY
PROSECUTING ATTORNEY and IDAHO STATE ATTORNEY
GENERAL**

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellant, JEROME KORN, appeals against the above-named Respondent to the Idaho Supreme Court from the Appellate Decision, entered by the Honorable Renae Hoff, District Judge, on December 12, 2007.
2. The Appellant has the right to appeal to the Idaho Supreme Court, and the

AMENDED NOTICE OF APPEAL

1

56

Appellate Decision described in paragraph 1 above is an appealable order under and pursuant to Rule 11(c)(10), I.A.R.

3. The Appellant provides the following preliminary statement of issues on appeal:
 - a. Did the trial court err and abuse its discretion by not applying the correct legal standard in ruling on the Defendant's Motion to Dismiss and thereafter denying the same?
 - b. Did the trial court err and abuse its discretion by failing to allow the admission of bankruptcy court orders into evidence at trial?
4. No orders have been entered sealing all or any portion of the record.
5. Appellant requests that the reporter's standard transcript as defined by I.A.R. 25(a) be prepared. Specifically, the Jury Trial held before Judge Dillon on August 24, 2006, and the hearing on the Defendant's Motion to Dismiss held before Judge Dillon on August 4, 2006, both transcripts having been previously prepared for the appeal to the District Court.
6. The Appellant requests that the following documents be included in the clerk's record in addition to those automatically included pursuant to I.A.R. 28.
 - a. None.

I hereby certify:

- A. That a copy of this Notice of Appeal has been served on the reporter, Tamara Weber.
- B. That the Clerk of the District Court has been paid the estimated fee for preparation of the reporter's transcript.

AMENDED NOTICE OF APPEAL

2

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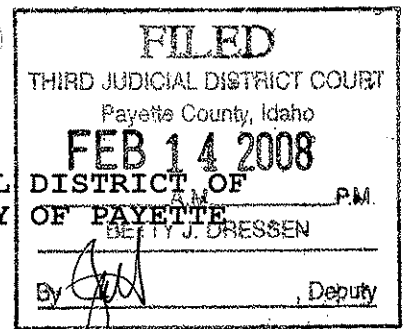
- C. That the estimated fee for preparation of the clerk's record has been paid.
- D. That service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED this 12 day of February, 2008



JOHN T. BUJAK
Attorney for Defendant/Appellant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL
THE STATE OF IDAHO, IN AND FOR THE COUNTY



STATE OF IDAHO,
Plaintiff/Respondent,

AMENDED
CLERK'S CERTIFICATE OF APPEAL

Vs.

JEROME L. KORN,
Defendant/Appellant.

CASE NUMBER: CR-2006-0001271

SUPREME COURT #34965

Appeal from: Third Judicial District, County of Payette, Canyon
County District Judge, Honorable Renae J. Hoff, presiding.

Case Number from court: Magistrate Court: CR-2006-0001271

Order or judgment appealed from: **APPELLATE DECISION ENTERED ON
December 12, 2007.**

Attorney for Appellant/Defendant: John Bujak, Bujak Law Office.

Attorney for Respondent: State of Idaho, Attorney General

Appealed by: Defendant - John Bujak, Bujak Law Office

Appealed Against: The State of Idaho

Amended Notice of Appeal Filed: February 12, 2008

Notice of Cross-Appeal Filed: _____

Amended Notice of Cross Appeal Filed: _____

Appellate Fee Paid: No. Criminal Appeal

Respondent or Cross-Respondent's request for additional record
filed: _____

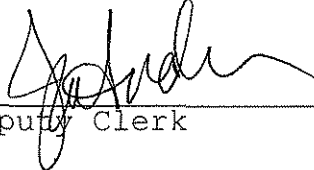
Respondent or Cross-Respondent's request for additional Reporter's
Transcript filed _____

Was District Court Reporter's Transcript requested?

If so Name of Reporter: Tami Weber, Canyon Transcription, prepared
transcript per District Court order.

AMENDED CLERK'S CERTIFICATE OF APPEAL page-1-

DATE: February 14, 2008
Betty J. Dressen
Clerk of the District Court

By: 
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE

STATE OF IDAHO,
Plaintiff/Respondent,

CASE NUMBER: CR-2006-0001271

Vs.

SUPREME COURT #34965

JEROME L. KORN,
Defendant/Appellant.

CERTIFICATE OF EXHIBITS

I, Betty J. Dressen, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Payette do hereby certify that the following is a list of the exhibits, offered or admitted and which have been lodged with the Supreme Court or retained as indicated:

DEFENSE Motion to Dismiss Hearing on 8/4/06 EXHIBIT LIST

<u>State's Exhibit No.</u>	<u>Description</u>	<u>Admitted</u>	<u>Ruling Reserved</u>
1	Payette County Ordinance No. 2005-4	X	
2	Copy of Affidavit of Publication	X	
3	Order approving and confirming the sale of the Nampa real estate	X	
4	Commissioners minutes dated April 25, 2005	X	
5	Copy of building permit application	X	
6	Request of DDR Nampa LLC for allowance of administrative expense claim	X	

JURY TRIAL EXHIBITS 8/24/06

<u>State's Exhibit No.</u>	<u>Description</u>	<u>Admitted</u>	<u>Ruling Reserved</u>
1	Notice of Abatement	X	
2	Department of Agriculture Denial Letter	X	
3	Photographs of Tigers & Giraffe	X	
4	Transcript of prior testimony	X	

CERTIFICATE OF EXHIBITS -1

<u>Defense Exhibit No.</u>	<u>Description</u>	<u>Admitted</u>	<u>Ruling Reserved</u>
A	Letter from Bujak Law Office re: hearing	X	
B	Letter from M. Spink to R. Buttars	No ruling	
C	Building Permit Application	X	
D	Private Park Permit	X	
E	Order Approving & Confirming Sale of Nampa Property	Denied	
F	Order Releasing Funds	Denied	

I FURTHER CERTIFY, that the following documents will be submitted as EXHIBITS TO THE RECORD:

1. Transcript of Motion to Dismiss August 4, 2006, filed April 17, 2007
2. Transcript of Jury Trial August 24, 2006, filed on April 17, 2007

I FURTHER CERTIFY, that the following documents will be submitted as CONFIDENTIAL EXHIBITS TO THE RECORD:

NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Payette, Idaho, this 11 day of March, 2008.

Betty J. Dressen
Clerk of the District Court

By [Signature]
Deputy Clerk

CERTIFICATE OF EXHIBITS -1

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE

STATE OF IDAHO,
Plaintiff/Respondent,

Vs.

CASE NUMBER: CR-2006-0001271

SUPREME COURT #34965

JEROME L. KORN,
Defendant/Appellant.

CLERK'S CERTIFICATE

I, Betty J. Dressen, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Payette do hereby certify that the above and foregoing Record in the above-entitled cause was compiled and bound under my direction and is a true, full and correct Record of, the pleadings and documents under Rule 28 of the Idaho Appellate Rules.

I do further certify that all documents, x-rays, charts and pictures offered or admitted in the above-entitled cause will be duly lodged with the Clerk of the Supreme Court along with the Court Reporter's Transcript and Clerk's Record.

I further certify that, in addition to the exhibits identified in the Reporter's Transcript, the following will be submitted as a confidential exhibit to the Record on Appeal:

None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Payette Idaho, this 11 day of March, 2008.

Betty J. Dressen
Clerk of the District Court

By [Signature]
Deputy Clerk

CLERK'S CERTIFICATE -1

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE

STATE OF IDAHO,
Plaintiff/Respondent,

Vs.

CASE NUMBER: CR-2006-0001271

SUPREME COURT #34965

JEROME L. KORN,
Defendant/Appellant.

CLERK'S CERTIFICATE OF SERVICE

I, Betty J. Dressen, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Payette do hereby certify that I have personally served or mailed, by United States mail, postage prepaid, one copy of the Clerk's Record and any Reporter's Transcript to each of the parties or their Attorney of Record as follows:

JOHN BUJAK
Attorney for Defendant/
Appellant
826 Third Street South
Nampa, Idaho 83651
Attorney for:
Appellant/Defendant

LAWRENCE WASDEN
Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010
Attorney for:
Respondent/Plaintiff

The parties shall have twenty-eight (28) days from the date of service of the appeal record to file any objections, together with a Notice of Hearing, with the District Court. If no objection is filed, the record will be deemed settled and will be filed with the Supreme Court.

If there are multiple (Appellants) (Respondents), I will serve the record, and any transcript, upon the parties upon receipt of a stipulation of the parties, or court order stating which party shall be served. If no stipulation or order is filed in seven (7) days, I will serve the party whose name appears first in the case title.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Payette Idaho, this 11 day of

March, 2008.

Betty J. Dressen
Clerk of the District Court

By [Signature]
Deputy Clerk

CLERK'S CERTIFICATE OF SERVICE-1